



# POWER UNDER THE CONSTITUTION OF INDIA

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## Introduction

"The legal right or authorization to act or not to act; an ability conferred on a person by law to alter, by an act of will, the rights, duties, liabilities, and other relations, either of that person or another" are some interpretations of "power."

## Details about Concept:

### Powers of constitution:

The president has the authority to appoint individuals to the positions of Prime Minister (Article 75), Attorney General of India (Article 76), Judges of the Supreme Court and of the High Courts in the States (Articles 124 and 227), Comptroller and Auditor General of India (Articles 148 and 155), Governors of States (Articles 155), Inter-State council for Coordination among the States (Articles 263 and 280), Chairman and (Article 340).

a Commission to report on the management of the Scheduled Areas and the welfare of the Scheduled Tribes after 10 years have passed since the Constitution's inception and ten years have passed since such inception (Article 339).

### Powers of the president to legislate –

He has the authority to call, prorogue, and dissolve the House of Representatives (Article 85). When the Houses of Parliament are gathered together, he may also speak before either or both of them and deliver communications about pending legislation to either house (Article 86). The President's recommendation is a prerequisite for the introduction of some laws into parliament for consideration. These include

- A measure that would change the names, borders, or territories of States that already exist (Article 3)
- A monetary bill (Article 117)
- A law relating to Consolidated Fund of India expenditures (Article 117)
- A measure that aims to enact any tax or fee that states are interested in (Article 274)
- A measure limiting trade freedom, commerce.

### Rule Making Powers of President:

According to the constitution, the President has broad authority to establish laws in many different fields. The president is given the authority to create regulations to make business dealings for the Indian government easier under Article 77. He is given the authority to create the rules of procedure for joint sittings of the houses by Article 118. According to the constitution, he has more authority to enact laws and regulations under several provisions, including Articles 101, 318, and 320.

### The president must present the following declarations to the legislature:

- The Financial Statements for the Year (Article 112)
- A statement adding new grants to the existing one (Article 115)
- Indian Comptroller and Auditor General's Reports (Article 151)
- Report of each suggestion made by the Finance Commission, together with an explanation of how those recommendations were implemented (Article 281)
- Annual report of the UPSC accompanied with a memo outlining any instances in which the commission's recommendations weren't followed and the reasons why (Article 323)
- The Scheduled Castes and Scheduled Tribes Special Offices Report (Article 338)
- A memorandum outlining the steps that were taken in response to the commission's findings on the social and educational situations of the underprivileged classes (Article 340).
- A simple reading of the Indian constitution's clauses reveals that the president is the official head of state and exercises neutral power.

### Pardoning Powers of the President –

According to Article 72 of the constitution, the president has the authority to commute sentences and give pardons, reprieves, respites, or remissions as well as suspend or remit sentences for those who have been convicted of crimes. As a pardon doesn't overturn the court's judgement, this is only within the president's

executive authority and outside the purview of his legislative powers. The president must follow the Council of Ministers' recommendations because this is not a personal power of his, according to the Supreme Court in the case of State of Punjab vs. Joginder Singh. Additionally, it has been asserted that the President must evaluate.

The issue that might arise if the president is granted complete discretion is one that is inherent in the constitution. A lawsuit against the Indian government for any executive or legislative actions done by the president may only be brought in the name of the Union of India, according to Article 300 of the constitution. As the President would ultimately have the authority to take any action, this could result in a circumstance that causes a constitutional breakdown in the country. Therefore, he must adhere to the counsel given to him by the Council of Ministers. In a conversation with Dr. Rajendra Prasad, Dr. B.R. Ambedkar, the chief architect of the constitution, underlined this as well. According to Dr. B. R. Ambedkar,

"The President will need to recruit a different group of ministers to advise him if he rejects the counsel of the current government. [Emphasis added] He would never be able to act independently of the ministers.

### Separation of Powers:

In India, functions are separated from powers rather than the other way around. The idea of the separation of powers is not strictly followed in India, unlike in the US. The judiciary has the authority to overturn any unlawful laws that the legislature passes thanks to a system of checks and balances that has been put in place.

Because it is unworkable, the majority of constitutional systems today do not have a tight division of powers among the various organs in the traditional sense. The current system in India, the relationship between each organ, and its constitutional provisions are discussed in the sections that follow.

### What is Legislature?

- Enacting legislation is the legislature's main duty.
- It serves as the foundation for how the executive and judicial branches of government operate.
- It is occasionally given the top spot among the three organs because laws cannot be implemented and applied unless they are passed into law.

### What is Executive?

- The executive is the body responsible for putting into effect the laws passed by the legislature and upholding state policy.
- It is the head of the government's administrative branch.
- The executive is composed of ministers, including the president/governor and the prime/minister.

### What is Judiciary?

- The judiciary is the part of the government responsible for interpreting the law, resolving conflicts, and providing justice to all citizens.
- The judiciary is seen as the protector of the Constitution and the watchdog of democracy.
- The Supreme Court, High Courts, District Courts, and various lower courts make up this system.

### Case Laws:

#### Minerva Mills Ltd. and ors V Union of India and ors.

Clause 5 of Article 368 transgresses the limitation on the amending power of Parliament and is hence unconstitutional.

#### Berubari union case 1960

In the berubari union case, the president consulted with the supreme court of india regarding the Nehru-Noon agreement that was signed between the prime minister of india and the prime minister of Pakistan. The dispute was that the west Bengal state government did not want to give any territory of berubari to Pakistan.

**Kesavananda Bharati v state of Kerala**

upholding the validity of clause 1 of article 13 and a corresponding provision in article 368(3), inserted by the 24th Amendment, the Court settled in favour of the view that Parliament has the power to amend the fundamental rights. However, the Court affirmed another proposition also asserted in the Golaknath case, by ruling that the expression "amendment" of this Constitution in article 368 means any addition or change in any of the provisions of the Constitution within the broad contours of the Preamble and the Constitution to carry out the objectives in the Preamble and the Directive Principles. Applied to fundamental rights, it would be that while fundamental rights cannot be abrogated, reasonable abridgement of fundamental rights could be affected in the public interest. The true position is that every provision of the Constitution can be amended provided the basic foundation and structure of the Constitution remains the same.

**Conclusion**

The researcher would want to draw a conclusion by stating that although the president of India, who is the constitutional head of state, acts in accordance with the Council of Ministers' recommendations, he is not required to do so at all times. However, he has the authority to exercise his independent judgement in some circumstances where the President may heed the Council's advice without being bound by it authority to exercise his independent judgement in some circumstances where the President may heed the Council's advice without being bound by it.

Although there is no real risk of the Indian president ever becoming an autocrat because he can be impeached and removed at any time if he violates the constitution, this has been permitted in order to keep a check on the actions taken by the president. If the president were to have absolute power, the Republic of India would gradually become a country ruled by a dictator. The constitution also grants the president the authority to dissolve ministries and ask the prime minister to resign. This is done in order to keep the legislative branches in check because there is a significant risk that the prime minister could turn the nation into a dictatorship if the president were only a symbolic figurehead with no real authority.

Therefore, the president serves as the "neutral power" to safeguard the country in times of need and to harmonise relations between the State, the Union, and other states. In India's current political climate, there is no one party both at the national and state levels. In order to uphold, defend, and safeguard the constitution and the law, he takes an active and significant part in national politics.